

**Mail Date:**

**AUG 16 2019**

Mail Date: \_\_\_\_\_

**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF M.C.  
DOCKET NO. 2018-09  
CLAIM OF M.C.

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the proposed Opinion and Recommendation and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's request to reinstate his disability supplement is DENIED. This Board AFFIRMS PSERS' denial of Claimant's 2016 *Application to Reapply for Renewal of Disability Benefits* and PSERS' determination to stop Claimant's disability supplement effective September 1, 2017.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: August 9, 2019

By: Melva S. Vogler  
Melva S. Vogler, Chairman



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

RECEIVED

APR 10 2019

PSERB  
EXECUTIVE OFFICE

Ruth D. Dunnewold, Hearing Examiner

E-Mail: rdunnewold@pa.gov

April 9, 2019

M [REDACTED] C [REDACTED]  
[REDACTED]

Cayla B. Jakubowitz, Esquire  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM  
5 North 5<sup>th</sup> St.  
Harrisburg, PA 17101-1905

Re: *In re: Account/Claim of M [REDACTED] C [REDACTED]*, Docket No. 2018-09

Dear Mr. C [REDACTED] and Attorney Jakubowitz:

Enclosed is a copy of my Opinion and Recommendation, filed in the above-referenced case. The Opinion and Recommendation have been submitted to the Public School Employees' Retirement Board ("Board") on this date for its consideration.

Pursuant to 1 Pa. Code §§ 35.211 – 35.214, any party who wishes to appeal all or part of the Opinion and Recommendation to the Board shall file exceptions, in the form of a Brief on Exceptions, within 30 days after service of a copy of this Opinion and Recommendation. A Brief Opposing Exceptions may be filed in response to a Brief on Exceptions within twenty (20) days of receipt of the Brief on Exceptions.

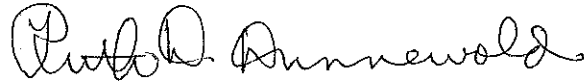
Exceptions and Briefs on Exceptions should be submitted to the attention of **Glen R. Grell, Secretary, Public School Employees' Retirement Board, 5 North 5<sup>th</sup> Street, Harrisburg, PA 17101**, with copies to the opposing party.

Failure to file a Brief on Exceptions within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§ 35.211 – 35.214 shall constitute a waiver of all

M [REDACTED] C [REDACTED]  
Cayla B. Jakubowitz, Esquire  
April 9, 2019  
Page 2

objections to the Opinion and Recommendation.

Very truly yours,



Ruth D. Dunnewold  
Hearing Examiner

RDD/rdd

cc: Laura Vitale, Appeal Docket Clerk

enclosure

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF M [REDACTED] C [REDACTED] :  
DOCKET NO. 2018-09 :  
CLAIM OF M [REDACTED] C [REDACTED] :

RECEIVED

APR 10 2019

PSERB  
EXECUTIVE OFFICE

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OPINION AND RECOMMENDATION

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**Ruth D. Dunnewold**  
**Hearing Officer**

Date of Hearing: December 13, 2018  
Hearing Officer: David M. Green, Esquire<sup>1</sup>  
For the Claimant: M [REDACTED] C [REDACTED], *pro se*  
For PSERS: Cayla B. Jakubowitz, Esquire

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<sup>1</sup>Hearing Officer Green presided at the hearing due to the undersigned hearing officer's illness, but responsibility for preparation of this Opinion and Recommendation remained with the undersigned hearing officer.

## HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by M [REDACTED] C [REDACTED] ("Claimant") on April 11, 2018. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated March 12, 2018 ("ESRC denial letter"), which denied Claimant's request to have his disability annuity reinstated, citing Claimant's continued failure to provide information that PSERS requested. On April 23, 2018, PSERS filed its Answer to Claimant's appeal.

By letter dated June 12, 2018, the Board's Secretary, Glen R. Grell, appointed Ruth D. Dunnewold to act as Hearing Officer for Claimant's administrative hearing. Also, by letter of June 12, 2018, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing on his appeal was scheduled for December 13, 2018, in Harrisburg, Pennsylvania. The hearing occurred as scheduled, before Hearing Officer David M. Green, who presided at the hearing due to the undersigned hearing officer's illness. Claimant attended the hearing and chose to proceed *pro se*, while Cayla B. Jakubowitz, Esquire, represented PSERS. At the close of the hearing, the parties elected to file post-hearing briefs. Thereafter, the hearing transcript was filed on January 2, 2019, and an Order Establishing Briefing Schedule, dated January 4, 2019, was issued.

The Order Establishing Briefing Schedule directed Claimant to file his post-hearing brief by close of business on February 4, 2019, PSERS to file its post-hearing brief in response by close of business on March 6, 2019, and Claimant to file his reply brief, if any, by close of business on March 18, 2019. The parties adhered to that schedule in filing their post-hearing briefs, and the record was closed on March 18, 2019, with the filing of Claimant's reply brief. Accordingly, the matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. In 2008, Claimant obtained his “dream job,” when the School District of Jenkintown (“District”) hired him as Athletic Director/Assistant to the Principal. PSERS Exhibit 12, p. 2; Notes of Testimony (“NT”) at 16, 17, 23.
2. In February 2011, while the District employed Claimant in that position, a student who had graduated in 2010 alleged that she was having an affair with Claimant. NT at 16, 17.
3. Claimant reported the allegations to his immediate supervisor and the District superintendent, who investigated and came up with nothing, so “[e]verything was fine.” NT at 16 – 17.
4. In January 2012, the former student renewed her allegations, which led to the District’s suspending Claimant without pay in January 2012. NT at 16 – 17, 23, 24.
5. The last day that Claimant was physically at work for the District was toward the end of January 2012. NT at 24.
6. On February 28, 2012, criminal charges were filed against Claimant based on the former student’s allegations (“2012 criminal matter”). NT at 17, 24.
7. On February 28, 2012, the District terminated Claimant’s employment because of the criminal charges. NT at 17, 24, 25.
8. On July 31, 2012, the Department of Education suspended Claimant’s education certificates based on the filing of the criminal charges in the 2012 criminal matter. NT at 25.
9. Because of the legal allegations and proceedings against him, Claimant developed anxiety, depression, hypertension and weight gain. PSERS Exhibits 1 and 7; NT at 18 – 19.
10. Possibly in the spring of 2012, and definitely by August 2012, Claimant began counseling with a therapist, who was not a psychiatrist or psychologist, at Jewish Family and Children’s Services (“JFCS”). PSERS Exhibit 9; NT at 30, 31, 33, 60, 114.

11. When Claimant began counseling with JFCS, he conveyed to his therapist that he was unemployed due to allegations of an inappropriate relationship with a student. NT at 30.

12. On August 3, 2012, Claimant first filed an *Application for Disability Retirement* (“initial Disability Application”) with PSERS. PSERS Exhibit 1; NT at 25, 45 – 46.

13. At the time, Claimant’s primary care doctor and family physician was [REDACTED] D.O., at Temple Physicians, who had been Claimant’s family doctor since Claimant was a child. PSERS Exhibit 1; NT at 31, 41, 100.

14. Claimant’s initial Disability Application included a *Physician’s Medical Report*, dated June 25, 2012, and signed by Claimant’s family physician, [REDACTED], which stated that “[b]ecause of recent legal allegations/proceedings the above has major stress induced depression and anxiety and is unable to work in his profession.” PSERS Exhibit 1 (*see Physician’s Medical Report*, p. 1).

15. The *Physician’s Medical Report* signed by [REDACTED] listed, under “Diagnoses,” anxiety/depression, exacerbation of hypertension, and weight gain, and stated that Claimant had “declined Antidepressant medication.” PSERS Exhibit 1; NT at 48.

16. Based on the recommendation of a PSERS medical examiner who had reviewed Claimant’s initial Disability Application, PSERS granted Claimant’s initial Disability Application for a period of one year. PSERS Exhibit 2; NT at 49, 50, 51 – 52.

17. By letter dated September 5, 2012, PSERS advised Claimant that PSERS’ medical examiners had approved Claimant’s disability benefit for one year and notified him that, in order to continue receiving a disability benefit after one year, Claimant was required, each year thereafter, to reapply for disability benefits and submit an *Annual Earnings Statement for Disability Benefits* form to PSERS. 24 Pa.C.S. 8508(b); PSERS Exhibit 2; NT at 52 – 53.

18. Based on the *Annual Earnings Statement for Disability Benefits* Claimant filed with PSERS in May 2013, following the District's termination of his employment in 2012, Claimant worked for Brown's Super Stores, earning \$1,072.80. PSERS Exhibit 3; NT at 53 – 54.

19. In 2013, 2014, and 2015, Claimant reapplied for renewal of disability benefits from PSERS, and PSERS granted him a one-year disability retirement each time. NT at 54, 56 – 57.

20. Based on the *Annual Earnings Statement for Disability Benefits* Claimant filed with PSERS in April 2014, Claimant had reportable earnings in 2013 from Artistic Audio, Inc., in the amount of \$3,400.00. PSERS Exhibit 4; NT at 55.

21. On July 31, 2014, Claimant pled guilty in the 2012 criminal matter to two misdemeanors, corruption of minors and endangering the welfare of children. NT at 25.

22. On December 18, 2014, the Department of Education revoked Claimant's education certifications, and those certifications have not been reinstated since that time, so Claimant cannot return to his prior public school employment. NT at 26.

23. Based on the *Annual Earnings Statement for Disability Benefits* Claimant filed with PSERS in April 2015, Claimant had reportable earnings in 2014 from Artistic Audio, Inc., in the amount of \$10,350.00. PSERS Exhibit 5; NT at 55 – 56.

24. Claimant obtained his real estate license in October 2015. NT at 38.

25. Claimant began working for American Destiny Real Estate in 2015, and at the time of the hearing, he was still employed there as a real estate agent. NT at 35, 37.

26. As a straight commission-based real estate agent, Claimant works 40 or more hours a week, from 6:00 a.m. to 6:00 p.m., depending on the time of year, with responsibilities that include preparing comparative market analyses, soliciting clientele, listing properties, and showing properties to clients/buyers. NT at 35 – 36.



27. Based on the *Annual Earnings Statement for Disability Benefits* Claimant filed with PSERS in April 2016, Claimant had reportable earnings in 2015 from Artistic Audio, Inc, in the amount of \$3,800.00, as well as from American Destiny Real Estate, LLC, in the amount of \$14,491.00. PSERS Exhibit 6; NT at 56.

28. On September 13, 2016, Claimant filed an *Application to Reapply for Renewal of Disability Benefits* (“2016 Renewal Application”) with PSERS. PSERS Exhibit 7; NT at 56.

29. Claimant’s 2016 Renewal Application, dated August 22, 2016, was signed by his family physician, [REDACTED] and stated, “[b]ecause of recent legal allegations the above patient has many stress related conditions including anxiety and depression and is unable to work in his profession.” PSERS Exhibit 7.

30. In Claimant’s 2016 Renewal Application, [REDACTED] gave diagnoses for Claimant of hypertension, weight gain due to stress, and anxiety/depression, and stated “antidepressants” and “counselling” were the treatment, without providing any specifics as to medication or treatment. PSERS Exhibit 7; NT at 101, 110 – 111.

31. By letter dated September 19, 2016, PSERS notified Claimant that PSERS’ medical examiner had reviewed the medical documentation submitted with Claimant’s 2016 Renewal Application, and indicated that, to determine Claimant’s continued eligibility for a disability annuity, PSERS must receive additional information from Claimant’s psychiatrist by November 19, 2016; specifically, PSERS requested a completed and signed *Psychiatric Disability Determination* (“PDD”) form which was to include a detailed evaluation of Claimant’s ability to perform the duties required by his public school employment under the impairment assessment section of the PDD form. PSERS Exhibit 8; NT at 57 – 58.

32. At an appointment with his JFCS therapist on November 2, 2016, which Claimant made for the purpose of discussing the PDD form, Claimant's JFCS therapist told him she was unable to complete the PDD form because she was not a psychiatrist or a psychologist. NT at 32 – 33.

33. By letter dated November 15, 2016, Claimant requested that PSERS grant him an extension of the deadline by which he was to produce the additional information, because his JFCS therapist had indicated that she was not comfortable filling out the PDD form, and Claimant immediately would begin searching for a psychiatrist to treat him and fill out the PDD form. PSERS Exhibit 9; NT at 33, 58, 59, 60.

34. PSERS received Claimant's request for an extension on November 16, 2016, and granted it by letter dated November 18, 2016, which indicated that Claimant's "physician **must** complete and return the [PDD] form by December 19, 2016, or [Claimant's] disability benefit will be suspended until the information is received." PSERS Exhibit 10 (bold emphasis in original); NT at 60 – 61.

35. By letter dated December 20, 2016, without any request from Claimant, but because Claimant had not yet returned the previously requested PDD form by the first extended deadline of December 19, 2016, PSERS granted Claimant an additional extension of time in which to return the PDD form "due to the need of a specialist's opinion," stating that "[a] psychiatrist **must** complete and return the previously requested information to PSERS by **February 19, 2017** or [Claimant's] disability benefit will be permanently stopped." PSERS Exhibit 11 (bold emphasis in original); NT at 61 – 62, 63 – 64.

36. Claimant did not return the PDD form to PSERS by February 19, 2017, so PSERS suspended Claimant's benefit. NT at 62.

37. On March 8, 2017, 17 days after the third deadline of February 19, 2017, without Claimant's having requested any additional extension beyond February 19, 2017, PSERS received

Claimant's completed PDD form; the PDD form was signed by [REDACTED], and dated February 9, 2017. PSERS Exhibit 12; NT at 22 – 23, 63.

38. Claimant's PDD form, signed by [REDACTED], did not indicate how many times [REDACTED] had seen Claimant before completing the PDD form, nor did it indicate when Claimant had begun treating with [REDACTED], stating instead that Claimant "with [sic] be working with me and will learn CBT techniques to decrease depression and anxiety." PSERS Exhibit 12, p. 4 and *passim*.

39. Claimant's PDD form, signed by [REDACTED], stated that "[o]ver the past five years, [Claimant] has been experiencing significant anxiety and depressive symptoms" and referred to Claimant's treatment with JFCS having begun in December 2012 and "recently ended" in December 2016. PSERS Exhibit 12, pp. 2 and 4.

40. Claimant's PDD form, signed by [REDACTED], indicated that Claimant's response to current treatment was "50% or greater, but less than 100% improvement." PSERS Exhibit 12, p. 4.

41. The GAF, an abbreviation of "global assessment of functioning," is a scale from 1 to 100, used to assess how well an individual is functioning, in terms of mental status, with 100 being the best; most people generally function between 85 and 100, depending on the day. NT at 102 – 103.

42. Claimant's PDD form, signed by [REDACTED], indicated that Claimant's highest GAF in the past year had been 61, but gave Claimant a current GAF of 65, an improvement. PSERS Exhibit 12, p. 4; NT at 102.

43. Generally speaking, some people with a GAF of 65 can work, and some cannot, but the GAF is not really used in isolation to determine whether someone qualifies for a disability; other factors, such as history, treatment, and medications, must be considered as well. NT at 102 – 103.

44. Despite Claimant's having missed all of PSERS' previously-stated deadlines for providing additional information, PSERS forwarded Claimant's completed PDD form, as part of Claimant's entire file, to a PSERS medical examiner for review. NT at 64.

45. After reviewing Claimant's file and the PDD form, PSERS' medical examiner recommended the denial of Claimant's 2016 Renewal Application. *Id.*

46. By letter dated April 3, 2017, faxed to PSERS on the same date, Claimant notified PSERS that he had a new address, [REDACTED]. PSERS Exhibit 13; NT at 26, 64 – 65.

47. Based on the *Annual Earnings Statement for Disability Benefits* Claimant filed with PSERS in April 2017, Claimant had reportable earnings in 2016 from American Destiny Real Estate, LLC, in the amount of \$40,701.13. PSERS Exhibit 14; NT at 66.

48. Rather than outright denying Claimant's 2016 Renewal Application, PSERS gave Claimant another chance to prove to PSERS that he was disabled at the time he was actively employed, and that he was currently still disabled, contacting Claimant by letter dated June 13, 2017, and notifying him of the following:

a. PSERS' medical examiner had reviewed the medication documentation submitted with Claimant's 2016 Renewal Application.

b. In order to properly evaluate Claimant's continued eligibility for a disability annuity, PSERS must determine whether or not Claimant's condition had improved, but based on the information received from him, PSERS was unable to make that determination.

c. PSERS' medical examiners needed documentation that proved Claimant's original conditions of stress-induced depression and anxiety still existed, had not improved, and still prevented him from performing the duties of his public school employment.

d. By July 25, 2017, Claimant must provide additional information regarding his conditions, specifically, all office progress notes and any other medical documentation from January 2011 to the present.

e. Claimant's failure to do so would result in the disability supplement portion of his benefit being terminated and his retirement automatically would be converted to an early/normal retirement.

PSERS Exhibit 15; NT at 27, 66, 70 – 71.

49. PSERS' June 13, 2017 letter was addressed to Claimant at the new address he had recently provided, was mailed to Claimant by first-class mail in accordance with PSERS' routine business practice for mailing letters, and was not returned to PSERS as undeliverable. NT at 67 – 68.

50. Claimant did not return the requested documentation to PSERS by the stated deadline of July 25, 2017, nor did he request an extension of the deadline. NT at 71.

51. By letter dated August 10, 2017, PSERS notified Claimant that his 2016 Renewal Application had been denied because PSERS had determined, based on the language of the Retirement Code at section 8307; the signed statement from Claimant's physician on the original *Physician's Medical Report* submitted on August 8, 2012, indicating that Claimant's condition stemmed from "recent legal allegations and proceedings;" and the lack of additional medical information to prove that Claimant was disabled before he went on unpaid leave of absence in February 2012, that Claimant was not eligible to receive a PSERS disability benefit. PSERS Exhibit 16.

52. PSERS' letter dated August 10, 2017 also informed Claimant that the disability supplement portion of his benefit would be stopped effective September 1, 2017, and PSERS had converted him to a regular retirement using Claimant's original option selection of Option 2. PSERS Exhibit 16; NT at 71, 73.

53. The letter of August 10, 2017 further informed Claimant of his right to appeal to PSERS' Executive Staff Review Committee ("ESRC"). PSERS Exhibit 16.

54. Claimant appealed to the ESRC but submitted no additional documentation with the appeal. NT at 74.

55. By letter dated March 12, 2018, the ESRC denied Claimant's request to have his disability annuity reinstated, citing the following basis for the denial:

By letter dated June 13, 2017, PSERS contacted you and requested specific additional medical information: office progress notes and other medical documentation from January 2011 to present. By law, you must provide requested information within 30 days, or your application may be voided. Because you continue to fail to provide the information requested, your request to reinstate your disability annuity must be denied.

PSERS Exhibit 17; NT at 74.

56. By Appeal and Request for Administrative Hearing filed April 11, 2018, Claimant appealed the ESRC's decision. Official notice of filings of record;<sup>2</sup> NT at 75.

57. On April 23, 2018, PSERS filed its Answer to Claimant's appeal. Official notice of filings of record.

58. On October 3, 2018, Claimant submitted additional medical records to PSERS. NT at 75.

59. The additional medical records Claimant submitted included records from JFCS, Temple Physicians, and Jeanes Hospital, the only places Claimant had treated from 2011 to 2017. NT at 29, 99.

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<sup>2</sup>Under the General Rules of Administrative Practice and Procedure ("General Rules"), 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 35.125(d)(1),

[t]he applications (including attached exhibits), complaints, orders to show cause and answers thereto and similar formal documents upon which hearings are fixed shall, without further action, be considered as parts of the record as pleadings.

Based on this rule, Claimant's Appeal and Request for Administrative Hearing filed April 11, 2018 is a part of the record as a pleading.

Also, under the General Rules at 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 35.173, a licensing board may take official notice of its own records. *See also Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (the doctrine of official notice allows an agency to take official notice of, among other things, reports and records in the agency's files). Therefore, these two rules allow official notice to be taken of Claimant's filing of his Appeal and Request for Administrative Hearing.

60. Claimant had asked his therapist at JFCS for notes from his visits with her. NT at 29 – 30.

61. Despite Claimant's indication that he had weekly and then biweekly sessions at JFCS over the course of his treatment there, the records from Claimant's therapist at JFCS comprised only five office notes over the four years from 2012 to 2016. NT at 29, 99.

62. Claimant had asked his family physician, [REDACTED], for all medical records from the time Claimant had been there that discussed anxiety and depression. NT at 32.

63. The records from [REDACTED] at Temple Physicians included office notes only from August 22, 2016 through April 20, 2018. NT at 31.

64. The Jeanes Hospital records documented a single visit during which Claimant had been treated for chest pain there, in March 2017. NT at 32.

65. Although Claimant asserted that he had seen [REDACTED] more than once when [REDACTED] completed the PDD form dated February 9, 2017, Claimant submitted no records from [REDACTED] that demonstrated more than one visit. NT at 34, 99 – 100, 116.

66. In 2017, Claimant had reportable earnings from American Destiny Real Estate, LLC, of approximately \$35,000.00. NT at 36.

67. In 2018, Claimant had reportable earnings from American Destiny Real Estate, LLC, of approximately \$35,000.00. *Id.*

68. Two of PSERS' medical examiners, [REDACTED], who is Board-certified in family practice, quality assurance and utilization review, and [REDACTED], a Board-certified psychiatrist, reviewed the additional medical records Claimant submitted to PSERS on October 3, 2018. NT at 75 – 76, 92, 99, 118 – 119, 123, 125.

69. Both [REDACTED] and [REDACTED] recommended that Claimant's 2016 Renewal Application be denied. NT at 76, 98, 99, 124 – 125.

70. In particular, [REDACTED] cited the following factors in support of his opinion that there is insufficient documentation to support the finding that Claimant is psychiatrically disabled from performing the duties of his public school employment:

a. The only medication for depression that was listed in any of the medical records for Claimant was Zoloft, 50 milligrams, which is a very low dose that is not consistent with an individual with disabling anxiety and depression. PSERS Exhibit 12, p. 4; NT at 104 – 105, 106.

b. There was no documentation in any of Claimant's medical records that he ever had a psychiatric evaluation. NT at 100.

c. Claimant's medical records indicate that he received limited treatment for anxiety and depression between 2012 and 2016, comprising 50 milligrams of Zoloft, a low medication dose prescribed by Claimant's family practitioner, and five appointments with a counselor, who was neither a psychologist nor a psychiatrist, at JFCS over the course of those four years. NT at 30, 33, 100, 104 – 105, 114 – 115.

d. Claimant did not go to a psychologist until PSERS requested the completion of the PDD form and Claimant's counselor at JFCS, who was neither a psychologist nor a psychiatrist, indicated she could not complete the form. PSERS Exhibit 9; NT at 33, 116.

e. The treatment Claimant had between 2012 and 2016 was inconsistent with the treatment that an individual with disabling anxiety and depression would need; such an individual would need intensive treatment and psychotherapy, which Claimant never had. NT at 105 – 106.

f. Given the indication by [REDACTED] in Claimant's PDD form that Claimant's GAF was 65, up from a high of 61 in the prior year, and that Claimant's response to



current treatment was “50% or greater, but less than 100% improvement,” Claimant’s medical records documented an improvement in Claimant’s condition. PSERS Exhibit 12, p. 4; NT at 102, 103.

g. Claimant’s full time work as a real estate agent is inconsistent with an individual who is disabled from working as an athletic director/assistant to the principal. NT at 108.

71. Claimant does not claim that hypertension or weight gain have anything to do with any disability he may have. NT at 120.

72. Claimant admitted that his condition has improved since he originally applied for a disability retirement from PSERS in 2012. NT at 19.

73. A hearing on Claimant’s appeal was held on December 13, 2018, before Hearing Officer David M. Green. NT at 4 and *passim*.

74. Claimant was present at the hearing, chose to proceed without counsel, and had the opportunity to be heard, pursuant to which he presented his own testimony, but presented no other witnesses or documentary evidence; he also cross-examined PSERS’ witnesses, made a closing statement for the record, and filed post-hearing briefs in support of his appeal. NT at 4 and *passim*.

## CONCLUSIONS OF LAW

1. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code"). *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).
2. Members of PSERS have only those rights recognized by statute and none beyond. *Bittenbender v. State Employees' Retirement Board*,<sup>3</sup> 622 A.2d 403 (Pa. Cmwlth. 1992).
3. Claimant bears the burden of establishing the facts necessary to sustain his claim. *See Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *see also Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991).
4. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. Findings of Fact 42 – 48, 71 – 72.
5. Claimant is not psychiatrically or physically disabled from performing his prior public school employment as an athletic director/assistant to the principal, Claimant was not disabled from performing his prior public school employment as an athletic director/assistant to the principal while he was still employed by the District, and at the time he filed his 2016 Renewal Application, Claimant was able to return to that prior public school employment. Findings of Fact 1 – 70.
6. Claimant has failed to demonstrate by a preponderance of the evidence that he is disabled from public school employment and that his 2016 Renewal Application for a disability retirement should be granted. Findings of Fact 1 – 70.
7. Claimant is not disabled from public school employment. Findings of Fact 1 – 70.

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<sup>3</sup>Cases interpreting provision of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

## DISCUSSION

This matter arises under section 8307 of the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 *et seq.* ("Retirement Code"), which provides as follows with regard to eligibility for a disability annuity:

**§ 8307. Eligibility for annuities.**

\* \* \*

**(c) Disability annuity.** — An active or inactive member who has credit for at least five years of service shall, upon filing of a proper application, be entitled to a disability annuity if he becomes mentally or physically incapable of continuing to perform the duties for which he is employed and qualifies for an annuity in accordance with the provisions of section 8505(c)(1) (relating to duties of board regarding applications and elections of members and participants).

\* \* \*

24 Pa.C.S. § 8307(c). The Board's regulations implementing this provision further provide that "[a]n active or inactive member with at least 5 years of credited school service shall be eligible, *upon submitting appropriate medical evidence*, to a disability annuity. . ." 22 Pa. Code § 213.44(a) (emphasis added).

Claimant bears the burden of proof in this proceeding. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999), *petition for allowance of appeal denied*, 751 A.2d 194 (Pa. 2000); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Claimant must prove his case by a preponderance of the evidence, *Lansberry v. Pennsylvania Public Utilities Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A. 2d 863 (Pa. 1992), which has been described as evidence of sufficient weight to "tip the scales on the side of the plaintiff." *Se-Ling Hosiery v. Margulies*, 70 A. 2d 854, 856 (Pa. 1960).

***Claimant's failure to provide requested information within 30 days***

In this case, Claimant appeals from a decision of PSERS' Executive Staff Review Committee, set forth in a letter dated March 12, 2018, which denied Claimant's request to have his disability annuity reinstated. The ESRC's letter cited the following basis for the denial:

By letter dated June 13, 2017, PSERS contacted you and requested specific additional medical information: office progress notes and other medical documentation from January 2011 to present. *By law, you must provide requested information within 30 days, or your application may be voided.* Because you continue to fail to provide the information requested, your request to reinstate your disability annuity must be denied.

PSERS Exhibit 17 (emphasis added). The 30-day response requirement to which the ESRC's letter refers is found in the Board's regulation at 22 Pa. Code § 215.5, which provides that

[a] disability applicant who is required by the Board to furnish additional medical documentation to support the application, shall provide the documentation within 30 days of the request, or the Board may render the disability application void.

22 Pa. Code § 215.5(a)(2). Based on the ESRC's letter and this regulation, then, the first issue in this matter is whether Claimant provided the requested information within 30 days.

On this question, the record evidence indicates that, beginning in September 2016, PSERS determined that it needed additional information from Claimant in order to determine if Claimant continued to be eligible for a disability annuity. At that time, PSERS sent Claimant a letter to that effect, specifically requesting that Claimant's psychiatrist provide a completed and signed PDD form, including a detailed evaluation of Claimant's ability to perform the duties required by his public school employment under the impairment assessment section of the PDD form, by November 19, 2016. That was the first deadline for Claimant's response that PSERS established.

However, by letter dated November 15, 2016, which was timely because PSERS received it on November 16, 2016, three days prior to the deadline for providing the requested information, Claimant requested an extension of the deadline because his JFCS therapist was not comfortable completing the PDD form, so Claimant needed to seek treatment by a psychiatrist so the psychiatrist could complete the PDD form. PSERS granted this first extension, establishing a second deadline for response by letter dated November 18, 2016, which indicated that Claimant's "physician **must** complete and return the [PDD] form by December 19, 2016, or [Claimant's] disability benefit will be suspended until the information is received." PSERS Exhibit 10.

When, by December 19, 2016, PSERS had not received the completed PDD form from Claimant's psychiatrist, PSERS could have enforced the regulation at 22 Pa. Code § 215.5(a)(2) and voided Claimant's 2016 Renewal Application at that point. But rather than enforce that provision this first time that Claimant missed a deadline and did not request an extension, PSERS granted Claimant, without Claimant's requesting it, a second extension of time in which to return the PDD form. By letter dated December 20, 2016, PSERS established a third deadline for response, stating that "[a] psychiatrist **must** complete and return the previously requested information to PSERS by **February 19, 2017** or [Claimant's] disability benefit will be permanently stopped." PSERS Exhibit 11 (emphasis in original).

Then, on March 8, 2017, which was 17 days *after* the third established deadline for a response, PSERS received the PDD form from Claimant's psychiatrist, [REDACTED]. The submission of the PDD form clearly did not meet the established deadline. Again, PSERS could have enforced the regulation at 22 Pa. Code § 215.5(a)(2) and voided Claimant's 2016 Renewal Application. But PSERS did not do so. Instead, despite Claimant's having missed all of PSERS' previously-stated deadlines for providing the PDD form, PSERS forwarded Claimant's completed PDD form, as part of Claimant's entire file, to a PSERS medical examiner for review, thereby providing for consideration of Claimant's 2016 Renewal Application.

In the meantime, by letter dated April 3, 2017, faxed to PSERS on the same date, Claimant notified PSERS of his new address, [REDACTED]. Subsequently, after reviewing Claimant's file and the PDD form, PSERS' medical examiner recommended the denial of Claimant's 2016 Renewal Application. But rather than outright denying Claimant's 2016 Renewal Application at that point, PSERS gave Claimant yet another chance to provide additional information. This time, PSERS contacted Claimant, by letter dated June 13, 2017, informing him of the following things:

- PSERS' medical examiner had reviewed the medication documentation submitted with Claimant's 2016 Renewal Application.
- In order to properly evaluate Claimant's continued eligibility for a disability annuity, PSERS must determine whether or not Claimant's condition had improved.
- Based on the information received from him, PSERS was unable to make that determination.
- PSERS' medical examiners needed additional documentation that proved Claimant's original conditions of stress-induced depression and anxiety still existed, had not improved, and still prevented him from performing the duties of his public school employment.
- By July 25, 2017, Claimant must provide additional information regarding his conditions, specifically, all office progress notes and any other medical documentation from January 2011 to the present.
- Claimant's failure to do so would result in the disability supplement portion of his benefit being terminated and his retirement automatically would be converted to an early/normal retirement.

PSERS Exhibit 15. Therefore, by this letter of June 13, 2017, PSERS gave Claimant yet another deadline – a fourth deadline – by which Claimant should provide additional medical documentation to support the 2016 Renewal Application. However, Claimant did not respond to the June 13, 2017 letter by the new deadline – the fourth – of July 25, 2017. Nor did he request an extension of that deadline.

Claimant asserts that he did not respond because he did not receive the June 13, 2017 letter. But PSERS provided uncontradicted evidence at the hearing indicating that PSERS' letter of June 13, 2017, was addressed to Claimant at the new address he had recently provided, was mailed to Claimant by first-

class mail in accordance with PSERS' routine business practice for mailing letters, and was not returned to PSERS as undeliverable. NT at 66 – 68. Under the mailbox rule, an evidentiary rule traditionally utilized by Pennsylvania's courts, testimony that a document was properly addressed and deposited in the mail in accordance with an agency's normal mailing procedures raises a presumption that the letter was received at its destination. *C.f. Harasty v. Public School Employees' Retirement Board*, 945 A.2d 783, 787 (Pa. Cmwlth. 2008), quoting *In re Cameron's Estate*, 130 A.2d 173, 177 (Pa. 1957). PSERS' evidence has raised that presumption, and it was Claimant's responsibility to present evidence to rebut it.

Claimant's sole evidence on this question was his testimony that he did not receive the June 13, 2017 letter. But the mere denial of receipt is not sufficient, by itself, to rebut the presumption of receipt. *Meierdierck v. Miller*, 147 A.2d 406, 408 (Pa. 1959); *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584, 585 (Pa. 1974). Therefore, Claimant's mere assertion that he did not receive the June 13, 2017 letter from PSERS is not sufficient to overcome the presumption of receipt raised by PSERS' evidence about the manner in which the letter was prepared and mailed. To rebut that presumption, Claimant had to produce additional evidence in support of his denial of receipt. He did not do so. Claimant, therefore, is presumed to have received PSERS' letter of June 13, 2017.

Yet, even though Claimant did not submit the requested information in response to the July 25, 2017 deadline set forth in the June 13, 2017 letter, PSERS ultimately accepted additional medical information from Claimant when he submitted it in October 2018. At that time, PSERS submitted it to PSERS' medical examiners for review, despite the fact that Claimant had submitted it more than a year after the deadline that PSERS had established.

In an attempt to shift to PSERS the blame for any missing additional medical information, Claimant argues that "[t]he two doctors who testified on behalf of PSERS based their opinions solely on the records I supplied." Claimant's Response to PSERS Brief ("Claimant's reply brief"), p. 1 (second

bullet). This is absolutely true. Claimant expanded on that argument by asserting that neither doctor made any effort to contact Claimant's medical practitioners to get additional information. This argument is faulty, however, because it was Claimant's responsibility – or burden – under section 8508(d) of the Retirement Code, to establish his continued disability. 24 Pa.C.S. § 8508(d).<sup>4</sup> That means it was Claimant's responsibility, not the responsibility of PSERS or its medical examiners, to see that all of the information and medical records necessary to establish his continued disability were provided to PSERS and its medical examiners. And PSERS tried multiple times to obtain the additional information from Claimant, even by specifically stating what he needed to produce, but he did not fulfill his responsibility by providing it. Given the numerous chances PSERS provided to Claimant so that Claimant could fulfill his burden under 24 Pa.C.S. § 8508(d), especially in the context of 22 Pa. Code § 215.5(a)(2), and especially when all of those chances are considered in combination with the fact that it was Claimant's responsibility to produce the requested information, Claimant's argument that PSERS and/or its medical examiners should have done more simply cannot be sustained.<sup>5</sup>

Based upon the above facts, PSERS bent over backwards to give Claimant multiple chances to provide PSERS with information and medical records necessary to establish his continued disability. As Claimant admits in his initial post-hearing brief, PSERS told him that the medical examiner had requested additional documentation, and PSERS gave him two separate extensions to submit the PDD

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<sup>4</sup>§ 8508. Rights and duties of annuitants.

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(d) *Continuances of disability annuities.* — In all instances, the member shall have the burden of establishing continued disability.

24 Pa.C.S. § 8508(d).

<sup>5</sup>It is unclear how Claimant expected PSERS or its medical examiners to obtain confidential medical information about him from any of his health care practitioners, especially when there is no indication in the record that Claimant provided them with releases giving them access to such information, nor is there any indication that PSERS or its medical examiners requested such releases from him. This is not surprising, in light of the fact that the Retirement Code assigns to members the burden of producing the information necessary to establish their continued disability. *See* 24 Pa.C.S. § 8508(d), *supra*.



form, which Claimant, nonetheless, still submitted *after* the extended deadline. And subsequent to the receipt of the PDD form, when PSERS still needed supplementary medical documentation from Claimant, PSERS informed Claimant of that fact and gave him time to produce it. But Claimant never met any of the deadlines PSERS established. Therefore, Claimant has failed to prove, by a preponderance of the evidence, that he provided additional medical documentation within 30 days of any request PSERS made for additional medical documentation. Under the regulation at 22 Pa. Code § 215.5(a)(2), then, PSERS was completely justified in denying his 2016 Renewal Application as void.

***Claimant's eligibility for a disability annuity***

Although the ESRC's decision to deny the reinstatement of Claimant's disability annuity rested on Claimant's continued failure to provide the requested information, the inquiry does not stop there. Claimant also argues that the medical documentation he submitted to PSERS was sufficient to prove him to be eligible for a disability annuity.

If, as Claimant asserts, he was treated earlier than the spring of 2012, or more frequently, by his JFCS therapist, or by [REDACTED], or by [REDACTED], then the additional medical records Claimant submitted to PSERS on October 3, 2018, did not include "all office progress notes and any other medical documentation beginning January 2011 to present," as PSERS had requested in its letter of June 13, 2017. PSERS Exhibit 12; PSER Exhibit 15 (emphasis added); NT at 29, 31, 34, 99 – 100. Therefore, Claimant has not complied with PSERS' June 13, 2017 request for additional information, and the above analysis related to Claimant's failure to provide requested information within 30 days is the final determination of this case.

On the other hand, if the additional medical records Claimant submitted to PSERS on October 3, 2018, accurately reflect the treatment he had received for anxiety and depression up to that date, then the question becomes whether the records are sufficient to prove he was disabled from work while he was still working for the District, as well as to prove he was disabled from work when he filed his 2016

Renewal Application. Based on the following analysis and the opinions rendered by the experts at the hearing, those records are not sufficient to prove Claimant is entitled to a disability retirement.

Under the Retirement Code at 24 Pa.C.S. § 8307(c), quoted earlier, there are essentially five elements that a member must prove in order for the member to be eligible for a disability annuity. The applicant must (1) be an active or inactive member of PSERS when he initially files his Application for Disability Retirement; (2) have credit for at least five years of service; (3) file a proper application; (4) become mentally or physically incapable of continuing to perform the duties for which he is employed; and (5) qualify for an annuity in accordance with section 8505(c)(1) of the Retirement Code.

Additionally, section 8508(d) of the Retirement Code, already mentioned above, provides that “[i]n all instances, the member shall have the burden of establishing continued disability.” 24 Pa.C.S. § 8508(d). In essence, this provision adds a sixth element that the member must prove when a disability renewal application is at issue: in that situation, the member also must prove he remains disabled from returning to his prior public school employment. Therefore, to warrant the renewal of his disability retirement, Claimant must prove that all six elements exist. In Claimant’s case, the first two elements are not in dispute. However, the third, fourth, fifth and sixth elements are at issue, so this opinion will address each in turn.

*Proper application/appropriate medical evidence*

The regulations implementing the Retirement Code flesh out the third element, filing a proper application, by defining what constitutes a “proper application.” That is, the regulations require an applicant for a disability annuity to submit “appropriate medical evidence.” 22 Pa. Code § 213.44(a). At the hearing, Claimant’s sole evidence was his own testimony. PSERS, on the other hand, offered into evidence the testimony of [REDACTED] and [REDACTED], two of PSERS’ medical examiners, who reviewed Claimant’s file and all of the medical records he submitted in order to determine if his medical conditions, as documented in his 2016 Renewal Application, warranted a finding of a disability. Both

medical examiners were qualified as experts, and both testified about the content of the medical evidence that Claimant presented. [REDACTED] testified as to Claimant's mental status, while [REDACTED] testified as to Claimant's physical status. Both concluded, after reviewing all of the available medical evidence, that said evidence was insufficient to support a finding that Claimant is disabled, either mentally or physically, from performing his prior public school employment as an athletic director/assistant to the principal.

This testimony by PSERS' medical examiners revolved around the medical documentation Claimant had presented to PSERS before ever getting to the hearing; they found it deficient. At the hearing, which was a *de novo*, or brand new, proceeding, Claimant had the opportunity to present appropriate medical evidence, perhaps new medical evidence, to support his disability claim. But he presented no medical evidence whatsoever. Rather, he simply gave his own account of his symptoms. While PSERS placed into the record the PDD form that [REDACTED] submitted on Claimant's behalf, PSERS Exhibit 12, on which Claimant heavily relies, PSERS' medical examiners both testified extensively about the shortcomings of that form and the other medical records they reviewed as part of Claimant's 2016 Renewal Application.

Indeed, relying on PSERS Exhibit 12 to support his testimony, Claimant asserts in his February 4, 2019 post-hearing brief that the PDD form submitted by [REDACTED] "clearly state[d], in his professional opinion that due to my social anxiety issues that I cannot perform my duties as an Athletic Director. This opinion was not questioned nor disputed in any way by PSERS prior to the hearing in December of 2018." However, PSERS *did* question that opinion which is clear from PSERS' June 13, 2017, letter, in which PSERS indicated that PSERS medical examiners needed documentation to prove that Claimant's original conditions still existed, and PSERS requested that Claimant provide additional information, in the form of "all office progress notes and any other medical documentation beginning

January 2011 to present.” PSERS Exhibit 15. Claimant provided no evidence to contradict the questioned PDD form.

Claimant did not offer any medical records into evidence, nor did he provide any testimony supporting his case, such as from a medical expert of his own, or any other evidence of any kind that would contradict the testimony of PSERS’ medical examiners or make PSERS Exhibit 12 somehow weightier than the medical examiners’ testimony. Claimant’s account, as a layperson, of his symptoms and how they have impacted him cannot outweigh those medical opinions, because his testimony is nothing more than a subjective personal opinion. His own personal opinion is not medical evidence and does not, therefore, constitute “appropriate medical evidence” within the meaning of 22 Pa. Code § 213.44(a). Accordingly, the third element is missing.

The fourth element, because it uses the term “is employed,” 24 Pa.C.S. § 8307(c), the present tense, rather than “was employed,” the past tense, requires that the individual’s disability must have occurred while he was still actively employed. PSERS asserted during the hearing that the Claimant’s initial Disability Application, and the renewals of it granted in 2013, 2014 and 2015, were granted in error. NT at 50 – 51. And in fact, there is a fund of evidence in the record to strongly suggest that Claimant’s mental health conditions did not come about while he was actively employed with the District.

For example, Claimant testified that, after the 2011 allegations against him and the related investigation, “[e]verything was fine.” NT at 16 – 17. He made no mention of anxiety or depression occurring in relation to that occurrence in 2011. Also, Claimant was suspended without pay in January 2012 and his last physical day of work was at the end of January 2012, a very short timeframe for disabling anxiety and depression to develop. Furthermore, When [REDACTED] did his evaluation of Claimant for [REDACTED]’s June 25, 2012 *Physician’s Medical Report*, which was part of Claimant’s initial Disability Application, [REDACTED] indicated that Claimant had declined antidepressants, which

suggests that anxiety and depression were not disabling issues at that time. PSERS Exhibit 1 (*see Physician's Medical Report*, p. 2). Additionally, [REDACTED] indicated, in the June 25, 2012 *Physician's Medical Report*, that Claimant's depression, anxiety, and inability to work in his profession were "[b]ecause of recent legal allegations/proceedings," implying that they had occurred because the District terminated Claimant's employment and because of the filing of charges in the 2012 criminal matter, both of which occurred on February 28, 2012, approximately one month after Claimant had last actively worked at the District. And Claimant himself testified that he told his JFCS therapist that he was unemployed because of allegations by a former student, rather than because he was unable to do the job due to his mental health condition or conditions.

Besides that, [REDACTED]'s 2016 medical report is almost identical in language to his June 25, 2012 *Physician's Medical Report*, stating "[b]ecause of recent legal allegation," Claimant had "many stress related conditions including anxiety and depression and is unable to work in his profession." PSERS Exhibit 7, p. 1. At that point, the legal allegations against Claimant were hardly "recent." Moreover, [REDACTED] testified that, in his review of all of Claimant's records, there was no documentation that Claimant had any significant treatment for anxiety and depression before the District terminated him in February 2012. NT at 109. Furthermore, Claimant himself testified that the 2012 criminal matter cost him his career and family and that the people that believe he did what he was accused of are what make it difficult for him. NT at 18 – 19. That would not be true if his conditions predated his termination by the District and the filing of the charges against him in the 2012 criminal matter. Finally, the records [REDACTED] provided in response to Claimant's request for all medical records from the time Claimant had been there that discussed anxiety and depression included office notes only from August 22, 2016 through April 20, 2018, long after Claimant stopped working at the District. All of this strongly implies that Claimant's anxiety and depression issues arose after the District terminated his employment.

This conclusion also is supported by the absence of element three, appropriate medical evidence. Because appropriate medical evidence to demonstrate Claimant's asserted disability is absent from the record, it follows that Claimant has failed to demonstrate, by a preponderance of the evidence, that anxiety, depression, exacerbation of hypertension and/or weight gain prevented him from continuing to work as an athletic director/assistant to the principal when the District terminated his services in February 2012. In light of these considerations, the evidence does not support the presence of the fourth element.

With regard to the fifth element, section 8505(c)(1), the provision of the Retirement Code referenced in 24 Pa.C.S. § 8307(c), provides as follows:

**(c) Disability annuities.** — In every case where the board has received an application duly executed by the member or by a person legally authorized to act in his behalf for a disability annuity based upon the member's physical or mental incapacity for the performance of the job for which he is employed, the board shall:

**(1)** Through the medical examiner, have the application and any supporting medical records and other documentation submitted with the application reviewed and, on the basis of said review and the subsequent recommendation by the medical examiner regarding the applicant's medical qualification for a disability annuity along with such other recommendations which he may make with respect to the permanency of disability or the need for subsequent reviews, make a finding of disability or nondisability and, in the case of disability, establish an effective date of disability and the terms and conditions regarding subsequent reviews.

24 Pa.C.S. § 8505(c)(1). Under this provision, the fifth element that must be present is that a PSERS medical examiner must make a finding of disability after reviewing the application, any supporting medical records, and other documentation submitted with the application.

As is clear from the discussion above, PSERS' medical examiners, [REDACTED] and [REDACTED], reviewed Claimant's file and all of the medical records he submitted to determine if his medical conditions, as documented in his 2016 Renewal Application, warranted a finding of a disability. But because there was a lack of appropriate medical evidence, both of PSERS' medical examiners were unable to make such a finding. Claimant presented no evidence to contradict either medical examiner's

expert medical opinion, each of which was offered to a reasonable degree of medical certainty. NT at 101 – 102, 103, 108, 109, 124, 125. The two medical opinions, taken together, indicate that the record evidence is insufficient to determine that Claimant was either mentally or physically incapable of continuing to perform the duties for which he was employed. The fifth element, therefore, is also missing.

And finally, as to the sixth element, Claimant must prove by a preponderance of the evidence that he remains disabled from returning to his prior public school employment. Claimant asserts that his entitlement to the disability benefit was affirmed by the fact that PSERS granted it for four years in a row prior to terminating it. *See* Claimant’s February 4, 2019 post-hearing brief, first page, bullet point. PSERS asserts that those years were granted by mistake. NT at 50 – 51. However, the validity of Claimant’s entitlement in those years is not relevant to the decision about whether he was entitled in 2016, because the sixth element, as stated in section 8508(d) of the Retirement Code, already mentioned above, provides that “[i]n all instances, the member shall have the burden of establishing continued disability.” 24 Pa.C.S. § 8508(d). Claimant, then, has to prove all of the elements all over again.

PSERS’ medical examiners, however, testified that Claimant is not disabled, physically or psychiatrically, from returning to his prior public school employment. Claimant presented no medical evidence to contradict their expert opinions. The testimony of the medical examiners, therefore, tips the evidentiary scales in favor of PSERS and leaves the sixth element unproven as well.

In light of all of the foregoing, the evidence of record does not support the required elements three, four, five and six of a successful request for renewal of Claimant’s disability annuity. It follows that Claimant has not sustained his burden of proof.

## CONCLUSION

Based on all of the above, the facts of record support two conclusions. First, Claimant failed to furnish additional medical documentation to support his 2016 Renewal Application within 30 days of several requests PSERS made for additional documentation, justifying the Board's rendering the 2016 Renewal Application void, pursuant to the Board's regulation at 22 Pa. Code § 215.5(a)(2). Second, Claimant was not disabled from performing his job duties as an athletic director/assistant to the principal in 2012 when he filed his initial Disability Application, when he filed his 2016 Renewal Application, or at the time of the hearing. Consequently, he has not established, by a preponderance of the evidence, all of the elements of a successful disability renewal claim under the Retirement Code at 24 Pa.C.S. §§ 8307(c) and 8505(c)(1). Accordingly, the following recommendation will be made to the Board:



